

Draft Minutes of the
Employment Advisory Council
Department of Workforce Services, 140 East 300 South, Salt Lake City
December 1, 2016 – 2:30 p.m.

Council Members Present:	Jon Pierpont, Chair	Department of Workforce Services
	David Davis	Employer Representative, Utah Retail Merchants Association
	Jan Zogmaister	Public Representative
	Susan Johnston (for Erin Trenbeath-Murray)	Public Representative
	Matt Minkevitch	Public Representative
	Ryan Mecham	Public Representative
	William Nickell	Employee Representative, Utah Career Center
	Diane Lewis	Employee Representative, Utah Laborer's Local #295
	Tony Montano	Employee Representative, Utah State AFL-CIO
	Dale M. Cox	Employee Representative, Utah State AFL-CIO
Council Members Excused:	Dan Peay	Employee Representative, United Steelworkers, AFL-CIO
	John Chindlund	Employer Representative, Prince, Yeates & Geldzahler
	Greg Diven	Employer Representative, OCM, Inc.
	Todd Bingham	Employer Representative, Utah Manufacturers Assn.
	Richard Thorn	Employer Representative, Assoc. of General Contractors
DWS Staff Present:	Dee Rowland	Public Representative
	Michelle Beebe	Director, Unemployment Insurance
	Kathy Bounous	General Counsel, DWS
	Mike Miller	Chief, UI Contributions
	Justin Williams	Chief, UI Benefits
	Bethany Hyatt	PIO, DWS Communications
	Bradley Salmond	Program Manager, Unemployment Insurance
	Martha Madariaga	Sr. Business Analyst, Unemployment Insurance
	Blaine Cook	Program Specialist, Unemployment Insurance
	Grazyna Janeczko	Auditor, Unemployment Insurance
	Katy Pace	Supervisor, Unemployment Insurance
	Mary Gehman-Smith	Support Staff Supervisor, Unemployment Insurance, Minutes

Agenda Item	Discussion
Welcome and Approval of Minutes	Ms. Beebe welcomed the Council. Mr. Pierpont called for approval of both the April 7, 2016 and the August 11, 2016 Meeting Minutes. David Davis motioned to accept both sets of Minutes as written, William Nickell seconded the motion and the motion carried.
Council Appointments and Vacancies	Ms. Beebe introduced new member Ryan Mecham, representing the Public. Mr. Mecham reported he is the Chief Operating Officer of Powerblanket, a manufacturing company. He stated he is happy to be part of this Council.
UI Trust Fund and 2017 Finalized Rates	<p>Ms. Beebe referred to the UI Trust Fund Balance Projections (Attachment A):</p> <ul style="list-style-type: none"> • The 2017 Tax Rates have been finalized. As of June 30, 2016, the Trust Fund balance was \$1.8M over the maximum level (this works out to an average of \$23.33 per employer). The minimum and maximum levels are set by the Legislature, with a formula that ensures if Utah were to experience another recession, there would be enough money in the Trust Fund to pay 18-24 months of elevated benefits; • In order to accommodate the overage, we are going to see a decrease in our Reserve Factor. At the last meeting, the projection initially showed a decline in the Trust Fund Balance. The State's Revenue Assumption's Working Group (the individuals that set the numbers for the Governor's office), anticipate a slight increase in the State Unemployment Rate in 2018. The rate is currently at 3.2% but is expected to rise to 4%. However, this won't be significant enough to cause the Trust Fund balance to decline. Currently, the balance is a little over \$1B. <p>Ms. Beebe referred to the UI Trust Fund Reserve Factor and Social Cost Calculation (Attachment B):</p> <ul style="list-style-type: none"> • The status of the Trust Fund as of June 30, 2016 dictates how the tax rates are set for calendar year 2017; • With the balance of the Fund being greater than the Maximum Adequate amount, the Reserve Factor is decreasing from 1.00 to 0.95. The Social Cost, which is the amount of benefits paid out of the Fund, that are contributable to a specific company, is expected to remain the same, 0.002 or 0.2%; • This year, a technical change was made to the way one component of the Social Costs are calculated. UI Collections reviewed the amount owed for overpaid benefits and determined how much of that is considered uncollectable, i.e., no current contact information or the individual may be deceased. This is put into a Social Cost bucket. The formula was adjusted; <ul style="list-style-type: none"> ○ In FY2014, we showed \$12M in uncollectable overpayments; in FY2015, we showed \$800,000. This kind of wild swing caught our eye. It was determined there was an issue in the way uncollectable benefit overpayments were being defined. It was adjusted and aligned with the statute. As uncollectable benefit overpayments are less than 5% of the total Social Costs, it had no impact on the Social Cost rate. The majority of Social Costs come from non-charged benefits,

i.e., when an individual quits their job due to mitigating family circumstances. If they continue to be able and available to seek work, they are eligible for benefits, but because the company didn't have direct control over why they quit their job, we are not necessarily going to hold the company liable. Any benefits paid on that claim, become part of this non-charged benefit cost.

- Mr. Davis asked for clarification on the glitch between \$12M and \$800,000? Ms. Beebe explained the previous formula looked at the amount of the overpayment established during the previous four fiscal years, then subtracted the amount that had been waived, and the amount that had been written off as uncollectable. Upon evaluation, DWS determined that including the amount established is not helpful. As the economy improves and fewer benefits are being paid, we are establishing less in overpayments. As this amount established declined significantly between FY 2014 and FY2015, it created that wild swing with the potential for a negative amount in the future.
- The statute allows if one is not at fault for an overpayment, DWS will not actively collect, but it still stays on the books if one files a claim in the future. DWS will waive if the individual is not at fault for the overpayment and the individual demonstrates that they are below the poverty level. In evaluating the updated formula to only include the amount waived, the amount that has been written off, and the amount that has been charged off, it comes to about \$3M. This amount has been steady throughout the last couple of years.
- Mr. Davis asked if you consider the Social Cost calculation without the \$3M, would it have stayed at 0.2? Ms. Beebe confirmed that it would have stayed at this same level. For Rate Year 2017, the uncollectable benefit overpayment constituted only 1.7% of total Social Costs, which is a pretty minimal amount.

Ms. Beebe referred to the **Unemployment Insurance Contributions vs Benefits Paid (Attachment C):**

- The green bars indicate the balance of the Trust Fund. The blue line is the amount of benefits paid and the red dotted line is the amount of Contributions' that are collected. This chart shows the counter cyclical nature of the Trust Fund;
- Benefit levels are expected to remain stable through 2017. 2016 had very similar benefit levels as 2015;
- The whole point of reviewing these graphs, and analyzing and monitoring these numbers is: 1) to ensure we have enough money in the Trust Fund to pay benefits to eligible individuals; 2) to ensure we have enough money in the Trust Fund to avoid a spike in employer tax rates during recessionary years when it hurts the most to pay the taxes; and, 3) to ensure we don't have too much money in the Trust Fund where we are arbitrarily collecting money from employers that would better be served in the economy.
 - Mr. Davis asked who manages the \$1B and where is it housed. Ms. Beebe explained all State's Unemployment Insurance Trust Funds are housed at the Federal Treasurer. Brad Salmond, UI Program Manager, reported the interest rate is between 2-3%.

Ms. Beebe referred to the **Utah 2017 UI Tax Rate Distribution for Active Employers (Attachment D):**

- These Rates become effective January 1, 2017. Employers won't actually experience the rates until they report their first quarter wages in April 2017;
- For 2017, 75.8% of Utah employers qualify for the minimum rate which is .002 or 0.2 percent. The minimum rate is equal to the Social Cost. This applies to a larger number of employers from 2016 where 73% of employers qualified for the minimum rate;
- The number of employers that are paying the maximum rate is 632.
 - Mr. Mecham asked how these rates are communicated to the employers. Ms. Beebe reported employers are notified by mail, annually, at the end of November or the beginning of December;
- Currently, 90% of employers file their quarterly wage reports online. One of the advantages is the system is automatically set up to show employers their current rate and how that translates into their liability per quarter.



UI Trust Fund

EXAMPLE Employer Qualifying for Minimum Rate			
Year	Social Cost Rate	Taxable Wage Base	Max UI Liability per Employee
2016	.002	\$32,200	\$64.40
2017	.002	\$33,100	\$66.20

In 2016, the taxable wage base was \$32,200. There is a slight increase for 2017. Because of the increase in the Taxable Wage Base, 75.8% of Utah employers will see about a \$2 per employee increase.

The remaining 24.2 percent of employers that do not qualify for the minimum rate because they have recent unemployment liability will see an impact from the Reserve Factor decreasing. This Reserve Factor decrease from 1.00 to 0.95 is due to the overall fund balance being above maximum level.

UI Trust Fund

EXAMPLE						
Employer Not Qualifying for Minimum Rate						
Year	Benefit Cost Ratio	Reserve Factor	Social Cost Rate	Overall Rate	Taxable Wage Base	Max UI Liability per Employee
2016	.0142	1.00	.002	.016	\$32,200	\$515.20
2017	.0142	.95	.002	.015	\$33,100	\$496.50

Overall Tax Rate Calculation: (Benefit Costs/Taxable Wages) X (Reserve Factor) + Social Cost Rate

In this example, a Benefit Cost Ratio of .0142 was used. If the employer has \$100,000 in payroll, assuming there are two employees earning \$50,000 each, if one of these employees files for unemployment and receives an average weekly benefit amount for 3-4 weeks, you would have this Benefit Cost Ratio.

Comparatively, if the employer had \$100M in payroll, assuming \$50,000 per employee with 2,000 employees. If about 300 of these employees filed for unemployment, and collect the average weekly benefit amount for the average number of weeks, you would have that same Benefit Cost Ratio.

- This takes into account the amount of benefit liability you have as well as the amount of payroll you have as an employer. Taking the Benefit Cost Ratio, multiply it by the Reserve Factor, then add on the Social Cost Rate of .002.
 - In 2016, this employer would be paying about \$515.20 per employee, in 2017; it has reduced to \$496.50. This is the benefit of being above the maximum level and having the Reserve Factor decrease.

Ms. Beebe referred to the **Average Employer Unemployment Insurance Tax Rates (Attachment E):**

How does Utah's 2017 Average Rate compare across the nation?

- In 2008, Utah's Average Rate was at its lowest point, coinciding with the pre-recession peak of the Trust Fund balance;
- In 2010-2011, Utah's Average Rate increased substantially. This was a formulary reaction to the depth and breadth of the recession. Benefit levels escalated and the Trust Fund balance diminished. It went below the minimum level and caused a 45% increase in the Reserve Factor. One of the things we were trying to mitigate is having the tax rates increase so fast at a time when employers are trying to stay in business. The Social Cost also doubled during this time;

	<ul style="list-style-type: none"> • In 2012-2013, with the support of this Council, Legislation was proposed to cap both the maximum rate and the Social Costs for employers, in an effort to mitigate the impact on employers who were trying to recover from the recession; • In 2014, the average tax rates start declining again and the Trust Fund balance entered that minimum/maximum healthy range. <p>Ms. Beebe referred to the 2017 Finalized Rates (Attachment F):</p> <p>One of the reasons Utah's Contribution Rate formula is strong is it is indexed to the average wage in Utah. DWS does not arbitrarily set the weekly benefit amount or the taxable wage base. As wages increase and we are insuring more wages, these automatically adapt;</p> <ul style="list-style-type: none"> • In 2017, anyone filing a claim for unemployment, effective January 1 or later, could qualify for a maximum of \$524.00 per week in benefits. The average is closer to \$379.00. It is based on their previous wage history. In order to be eligible for that claim, one would have had to earn at least \$3,600.00 during the 4-5 quarter period preceding the claim. That amount required to qualify is up from \$3,300.00 for 2016. Our Employer Taxable Wage Base has also increased from \$32,000.00 in 2016 to \$33,100.00. <p>Ms. Beebe referred to the Media Release (Attachment G):</p> <p>This general announcement goes out to the public and each individual employer receives a notice with information specific to their company rate. <u>A flyer "<i>Is Your Worker an Employee? Or an Independent Contractor?</i>" was included with this announcement.</u></p> <ul style="list-style-type: none"> • Mr. Davis asked if the Rate Notices show both the rate for last year and the current year. Mike Miller clarified only the current year's rate is shown in the letter. He added employers are welcome to call UI or if they are set up to file electronically online, that history is there for them. Mr. Davis suggested employers may like to see the comparison in the actual notice, particularly when the rates go down.
Open Meeting Training	Kathy Bounous provided a Summary of Key Provisions of the Open and Public Meetings Act (Attachment H) .
Potential Legislation for 2017	<p>Ms. Bounous reported there are two areas to focus on as it relates to UI:</p> <ol style="list-style-type: none"> 1. <u>Information Sharing with the Department of Labor Wage & Hour Division (DOL WHD)</u> <ul style="list-style-type: none"> • In 2015, parameters were set which allowed DWS to share information with the DOL WHD. When an employer is found to have misclassified workers and has failed to cure that misclassification, either by appealing that case or making payment arrangements, DWS can share this employer's name, the number of misclassified workers and the total aggregate wages to the DOL; <ul style="list-style-type: none"> ○ Sharing this information with the DOL allows them to narrowly tailor their investigations on those employers as they are most likely violating other laws under the FLSA. To date, we have not yet had the opportunity to share any data; ○ Since this bill had a Sunset Provision, we have asked our Interim Committee to run a Committee Bill and extend that

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	<p>Sunset by two years (Attachment I). This gives DWS an opportunity to share data and evaluate whether this is good for the State of Utah and its' employers. The Committee has unanimously agreed to do this;</p> <ul style="list-style-type: none"> ○ About 100 employers have been identified as misclassifying employees. There are about nine who haven't cured and could potentially be shared. <p>Mr. Mecham asked why DWS hasn't shared information with the DOL. Ms. Bounous stated the Memorandum of Understanding (MOU) took longer than expected. It was finalized in July.</p> <p>2. <u>Setting Attorney's Fees</u></p> <ul style="list-style-type: none"> • Currently, DWS has the ability to limit how much attorneys can charge when representing an employer or claimant during an appeal, as we don't want attorneys taking advantage of claimants who are in an unfortunate financial position; • During a recent case, the Supreme Court stated the Legislative Branch doesn't have the authority to set fees for attorneys. Under the Constitution, this belongs to the Judicial Branch; • DWS will amend our code to remove our authority to set attorney's fees but will maintain our ability to set fees on those who are assisting people in hearings who are not attorneys, such as paralegals, family members or other HR consultants. <p>Mr. Davis stated he is dealing with the same significant issue on attorney's fees on the Workers' Comp side. He is interested to see if, over the course of removing that restriction on attorney's fees, there is a change where we start to see attorneys who are taking cases on a contingency, then taking a percentage of the recipient's award (which could be 20-30% of their UI Benefit);</p> <p>Ms. Bounous stated it might be helpful to reach out to the State Bar and talk them through some of the concerns as they would have the power to put restrictions on fees. Ms. Bounous will speak with Commissioner Maughan. Ms. Bounous believes the cap for attorney fees is \$1,200 per case.</p>
Status Updates	<p>CUBS Modernization Project (Attachment J)</p> <p>Debt Collection Information (Attachment K)</p> <p>Ms. Beebe introduced Grazyna Janeczko, the full time UI auditor assigned to this project.</p> <ul style="list-style-type: none"> • In December, Ms. Janeczko will be sending out a document to all of the agencies that have requested information, asking them to certify that they are following the security parameters in the MOU they have signed. In early 2017, she will go out and do on-site visits; • The Council expressed they would like to continue to receive updates on this project. Mr. Davis expressed he still thinks this was a bad bill. He stated the Council has tried to protect the employer and employee data that comes in and is shared. He wants to ensure the flood gates don't get opened; • Mr. Minkevitch asked if we have control of the imposition fees. Ms. Beebe responded \$15.00 apiece, is approved by the

	Legislature each year and was calculated based on the assumed costs of responding to these requests.
Profile for UI Claimants	Snapshot of Individuals Filing for Unemployment Benefits (Attachment L). Ms. Trenbeath requested this information at the last meeting. Ms. Zogmaister asked what the percentage is for men versus women claimants. Ms. Mayne stated it is 44% women and 56% men.
Update on Major Activities within Workforce Services	<p>Mr. Pierpont reported at the August meeting, Jan Zogmaister requested an update on two DWS key issues: Homelessness and Intergenerational Poverty. The members were provided with a comprehensive report on Homelessness and a copy of the <i>5th Annual Report on Intergenerational Poverty</i>. He called on Mr. Minkevitch to provide recent statistics on homelessness:</p> <ul style="list-style-type: none"> • Mr. Minkevitch reported two nights ago was the highest demand for shelter in the Road Home's history. The cold weather is a factor. Over the last three nights, the number of individuals turning to the Road Home: 1,383, 1,406 and 1,361, respectively. : Their capacity is about 1,500. This includes the downtown shelter, St. Vincent's and the Midvale site. There is significant growth in the number of families requesting assistance; • The County Health Department warned that the number of camps out in the community was greater this year and the size of these camps was larger than in year's past. The Road Home is working with partners such as Salt Lake City and DWS to expand their capacity. They have not turned a single person away. The answer is deeply affordable, available housing; • There are other means available, such as motel leasing. They are leaning on their rapid rehousing model. About 1800 people will be in housing tonight, more than in shelters, thanks to partnerships with DWS, federal funding, and landlords. They want to continue that ratio. Mr. Minkevitch clarified this is mostly short-term housing. The vast majority do not return to the shelter; • Three families are moving out of shelter to housing today and five families tomorrow. <p>Mr. Pierpont added this is a tough subject but there are a lot of great people involved, strategies are currently being discussed with the City Council and the Mayor of Salt Lake City. Four more shelters and resource centers are being discussed. The City Council is committed to moving monies into helping with affordable housing. He thanked DWS for their partnership and support.</p> <p><i>The Annual Report on Intergenerational Poverty</i> will be discussed in detail at the next meeting.</p>
Other Business (including 2017 meeting schedule)	Ms. Beebe stated this Council met three times last year (April, August and December). Mr. Davis stated he likes three times per year with the understanding if something comes up during the Legislative Session, the group will meet as needed. He wants to send the message if there are issues relating to UI, this group is available to weigh in. Update: The 2017 meetings were scheduled as follows: April 20, August 17, and December 12. The meetings will be held at 2:30 p.m. for one hour.
Adjourn	Matt Minkevitch moved to adjourn the meeting at 3:39 p.m. All were in agreement.